

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
by D. MICHAEL FISHER,
Attorney General,

Plaintiff

v.

SEKAP S.A. GREEK COOPERATIVE
CIGARETTE MANUFACTURING COMPANY
Defendant

:
:
:
:
:
:
:
:
:
:

No. 436 M.D. 2002

COMPLAINT

PRELIMINARY STATEMENT

1. This is an action to enforce the Tobacco Settlement Agreement Act of 2000 (hereafter “TSAA”), 35 P.S. ' 5671, et seq. The TSAA was enacted by the General Assembly after Pennsylvania entered the Master Settlement Agreement (hereafter “MSA”) with the nation’s principal tobacco manufacturers. The purpose of the TSAA is to protect the Commonwealth and its citizens from the adverse economic and health effects resulting from cigarette smoking. A tobacco manufacturer’s failure to comply with the TSAA can result in civil penalties, imposition of attorney fees and costs, and a prohibition on the sale of its cigarettes within the Commonwealth. *See* 35 P.S. ' 5674.

PARTIES

2. Plaintiff is the Commonwealth of Pennsylvania, by and through its Attorney General, D. Michael Fisher. It is authorized to bring this action pursuant to 35 P.S. ' 5674(c).

3. Defendant SEKAP S.A. Greek Cooperative Cigarette Manufacturing Company, a.k.a. SEKAP, S.A. (hereafter, ASEKAP®) is a Greek corporation with a principal place of business at Xanthi 6th KLM, Kavala Road, GR-67100 Xanthi, Greece. SEKAP manufactures cigarettes intended for sale in the United States and other countries.

JURISDICTION

4. The Court has jurisdiction over original actions brought by the Commonwealth government pursuant to 42 Pa.C.S. ' 761.

STATUTORY BACKGROUND

5. On November 23, 1998, leading United States tobacco product manufacturers entered into the MSA with the Commonwealth of Pennsylvania. In return for a release of past, present and certain future claims, the MSA obligates these manufacturers to pay substantial sums to the Commonwealth (tied in part to their volume of sales); to fund a national foundation devoted to educating consumers about the dangers of tobacco use; and to make substantial changes in their advertising and marketing practices and corporate culture.

6. Not every tobacco product manufacturer is a party to the MSA. Recognizing this, the General Assembly enacted the TSAA to preclude those companies that do not join from gaining a cost-advantage over the manufacturers participating in the MSA and to ensure the Commonwealth a source of funds for recovery should those manufacturers be found liable for damages caused by their cigarettes. *See* 35 P.S. §5672(6).

7. Under the TSAA, a tobacco product manufacturer that sells cigarettes after June 22, 2000, must either become a participating manufacturer in the MSA or deposit a specific amount of money into a qualified escrow fund based on Pennsylvania sales of its cigarettes. *See* 35 P.S. §5674(a). Cigarette sales are measured by excise tax collections. *See* 35 P.S. §5673.

8. Each tobacco product manufacturer required to deposit funds into a qualified escrow fund must also certify annually to the Attorney General that it has complied with that statutory provision. *See* 35 P.S. §5674(c).

FACTUAL ALLEGATIONS

9. SEKAP is, and has been, a “tobacco product manufacturer” as defined in section three of the TSAA because it manufactures cigarettes that it intends for sale within the United States.

10. SEKAP has sold and continues to sell cigarettes directly or indirectly to consumers in Pennsylvania and, accordingly, has transacted and is transacting business within the Commonwealth of Pennsylvania.

11. SEKAP is not a participating manufacturer in the MSA.

12. The following SEKAP cigarette brands were sold in Pennsylvania in 2000 and/or 2001:

“Ideal”, “Biofilter Full Flavor”, “Biofilter Lights”, “Biofilter Ultra”, and “GR”.

13. In the year 2000, twenty million six hundred thirty four thousand eight hundred (20,634,800) SEKAP brand cigarettes were sold in Pennsylvania.

14. Based on sales in the year 2000, SEKAP was required to deposit two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40) in a qualified escrow fund for the benefit of Pennsylvania no later than April 15, 2001. *See* 35 P.S. §5674(a)(2)(i).

15. By letter dated March 20, 2001, SEKAP was specifically informed of its obligation to establish a qualified escrow fund for cigarettes sold in Pennsylvania for the year 2000. Attached hereto is a true and exact copy of the letter of March 20, 2001, marked as Commonwealth’s Exhibit A.

16. SEKAP was again notified of its outstanding obligation to timely escrow funds for the sale of cigarettes in Pennsylvania for the year 2000 in a second letter dated May 2, 2001. Attached hereto is a true and exact copy of the letter dated May 2, 2001, marked as Commonwealth’s Exhibit B.

17. SEKAP has not deposited any monies into a qualified escrow account for the benefit of Pennsylvania for the sale of its cigarettes in the year 2000.

18. SEKAP has not filed a certificate of compliance with the Attorney General for the year 2000.

19. In the year 2001, twenty three million three hundred thousand six hundred twenty (23,300,620) SEKAP brand cigarettes were sold in Pennsylvania.

20. Based on sales in the year 2001, SEKAP was required to deposit three hundred forty seven thousand eight hundred ninety two dollars and twenty-three cents (\$347,892.23) in a qualified escrow fund for the benefit of Pennsylvania no later than April 15, 2002. *See* 35 P.S. §5674(a)(2)(i).

21. By letter dated March 28, 2002, SEKAP was informed of its obligation to establish a

qualified escrow fund for cigarettes sold in Pennsylvania for the year 2001. Attached hereto is a true and exact copy of the letter of March 28, 2002, marked as Commonwealth's Exhibit C.

22. SEKAP has not deposited any monies into a qualified escrow account for the benefit of Pennsylvania for the sale of its cigarettes in the year 2001.

23. SEKAP has not filed a certificate of compliance with the Attorney General in Pennsylvania for the year 2001.

24. SEKAP has knowingly and continuously refused to comply with the TSAA for the years 2000 and 2001.

25. SEKAP's refusal to comply with the provisions of the TSAA for two consecutive years constitutes two separate and knowing violations of the TSAA.

COUNT I

VIOLATION OF TOBACCO SETTLEMENT AGREEMENT ACT FOR CIGARETTES SOLD IN 2000

26. Paragraphs 1 through 25 are incorporated herein by reference.

27. The failure of SEKAP to join the MSA or establish a qualified escrow fund for tobacco products it manufactured which were sold in Pennsylvania in 2000 constitutes a violation of 35 P.S. § 5674.

28. A tobacco manufacturer that fails to deposit the proper amount in a qualified escrow account may be assessed a civil penalty of up to five percent of the amount improperly withheld from escrow for each day of the violation until the amount of the penalty equals one hundred percent (100%) of the original amount improperly withheld from escrow that year. *See* 35 P.S. § 5674(c)(1).

WHEREFORE, the Commonwealth prays that:

- a. the Court find and declare that SEKAP has violated the TSAA by failing either to become a participating manufacturer or to establish a qualified escrow fund in the amount of two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40) for the benefit of Pennsylvania for cigarettes sold in the year 2000;
- b. the Court enter an order requiring SEKAP to come into compliance with the TSAA by depositing two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40) in a qualified escrow account and filing a certificate of compliance with the Attorney General within fifteen (15) days;
- c. SEKAP be assessed a civil penalty in the amount of two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40);
- d. the Commonwealth be awarded costs and attorney fees; and
- e. the Court grant such other and further relief as it believes just and equitable.

COUNT II

KNOWING VIOLATION OF TOBACCO SETTLEMENT AGREEMENT ACT FOR CIGARETTES SOLD IN 2000

29. Paragraphs 1 through 28 are incorporated herein by reference.
30. SEKAP has knowingly violated Section 5674 of the TSAA by failing either to become a participating manufacturer or to deposit two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40) into a qualified escrow fund based on the sale of its products in Pennsylvania in the year 2000.
31. A tobacco manufacturer that knowingly violates the TSAA may be assessed a civil

penalty of up to fifteen percent (15%) of the amount improperly withheld from escrow for each day of the violation until the amount of the penalty equals three hundred percent (300%) of the original amount improperly withheld from escrow for that year. *See* 35 P.S. §5674(c)(2).

WHEREFORE, the Commonwealth prays that:

- a. the Court find and declare that SEKAP has knowingly violated the TSAA by failing either to become a participating manufacturer or to establish a qualified escrow fund in the amount of two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40) for the benefit of Pennsylvania for cigarettes sold in the year 2000;
- b. the Court enter an order requiring SEKAP to come into compliance by depositing two-hundred thirty thousand ninety dollars and forty cents (\$230,090.40) in a qualified escrow account and filing a certificate of compliance with the Attorney General with the TSAA within fifteen (15) days;
- c. SEKAP be assessed a civil penalty in the amount of six hundred ninety thousand two hundred seventy one dollars and twenty cents (\$690,271.20);
- d. the Commonwealth be awarded costs and attorney fees; and
- e. the Court grant such other and further relief as it believes just and equitable.

COUNT III

**VIOLATION OF TOBACCO SETTLEMENT
AGREEMENT ACT FOR CIGARETTES SOLD IN 2001**

32. Paragraphs 1 through 31 are incorporated herein by reference.

33. The failure of SEKAP to join the MSA or establish a qualified escrow fund for tobacco products it manufactured which were sold in Pennsylvania in 2001 constitutes a violation of 35 P.S. § 5674.

WHEREFORE, the Commonwealth prays that:

- a. the Court find and declare that SEKAP has violated the TSAA by failing either to become a participating manufacturer or to establish a qualified escrow fund in the amount of three hundred forty seven thousand eight hundred ninety two dollars and twenty three cents (\$347,892.23) for the benefit of Pennsylvania for cigarettes sold in the year 2001;
- b. the Court enter an order requiring SEKAP to come into compliance with the TSAA by depositing three hundred forty seven thousand eight hundred ninety two dollars and twenty three cents (\$347,892.23) in a qualified escrow account and filing a certificate of compliance with the Attorney General within fifteen (15) days;
- c. SEKAP be assessed a civil penalty in the amount of three hundred forty seven thousand eight hundred ninety two dollars and twenty three cents (\$347,892.23);
- d. the Commonwealth be awarded costs and attorney fees; and
- e. the Court grant such other and further relief as it believes just and equitable.

COUNT IV

**KNOWING VIOLATION OF TOBACCO SETTLEMENT
AGREEMENT ACT FOR CIGARETTES SOLD IN 2001**

34. Paragraphs 1 through 33 are incorporated herein by reference.

35. SEKAP has knowingly violated Section 5674 of the TSAA by failing either to become a participating manufacturer or to deposit three hundred forty seven thousand eight hundred ninety two dollars and twenty three cents (\$347,892.23) into a qualified escrow fund based on the sale of its products in Pennsylvania in the year 2001.

WHEREFORE, the Commonwealth prays that:

- a. the Court find and declare that SEKAP has knowingly violated the TSAA by failing either to become a participating manufacturer or to establish a qualified escrow fund in the amount of three hundred forty seven thousand eight hundred ninety two dollars and twenty three cents (\$347,892.23) for the benefit of Pennsylvania for cigarettes sold in year 2001;
- b. the Court enter an order requiring SEKAP to come into compliance with the TSAA by depositing three hundred forty seven thousand eight hundred ninety two dollars and twenty three cents (\$347,892.23) in a qualified escrow account and filing a certificate of compliance with the Attorney General within fifteen (15) days;
- c. SEKAP be assessed a civil penalty in the amount of one million forty three thousand six hundred seventy six dollars and sixty nine cents (\$1,043,676.69);
- d. the Commonwealth be awarded costs and attorney fees; and
- e. the Court grant such other and further relief as it believes just and equitable.

COUNT V

**SECOND KNOWING VIOLATION OF
TOBACCO SETTLEMENT AGREEMENT ACT**

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. The TSAA provides that a tobacco product manufacturer that commits two knowing violations of 35 P.S. §5674(c)(2) is to be prohibited from selling cigarettes to consumers in the Commonwealth for two years. Each year that the tobacco product manufacturer fails to comply with the TSAA constitutes a separate offense. *See* 35 P.S. §5674(c)(3).

38. SEKAP has knowingly violated Section 5674 of the TSAA by failing either to become a participating manufacturer or to deposit funds into a qualified escrow fund for the benefit of Pennsylvania for the years 2000 and 2001.

WHEREFORE, the Commonwealth prays that:

- a. the Court find and declare that SEKAP has knowingly violated the TSAA by failing either to become a participating manufacturer or to establish and fund a qualified escrow fund for the benefit of Pennsylvania;
- b. the Court enter an order prohibiting SEKAP from selling cigarettes through the stream of commerce to consumers within this Commonwealth for a period of two years;
- c. the Court enter an order granting the Commonwealth the right to confiscate and destroy any and all of SEKAP's tobacco products offered for sale in Pennsylvania for a period of two years;
- d. the Court enter an order directing SEKAP to give written notice to all distributors, agents and sellers of SEKAP's tobacco products that for two years SEKAP's products may not be offered for sale in the Commonwealth of Pennsylvania;

- e. the Commonwealth be awarded costs and attorney fees; and
- f. the Court grant such other and further relief as it believes just and equitable.

Respectfully submitted,

MIKE FISHER
Attorney General

By:

KATHRYN M. HERRON
Deputy Attorney General
Attorney I.D. #81735

TIMOTHY P. KEATING
Deputy Attorney General
Attorney I.D. #44874

JOEL M. RESSLER
Chief Deputy Attorney General
Attorney I.D. #28625

Office of Attorney General
Tobacco Enforcement Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
PHONE: (717) 783-1794
FAX: (717) 705-0916
Dated: July 1, 2002

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

by D. MICHAEL FISHER,

Attorney General,

Plaintiff

v.

SEKAP S.A. GREEK COOPERATIVE

CIGARETTE MANUFACTURING COMPANY

Defendant

:
:
:
:
:
:
:
:
:

No. M.D. 2002

VERIFICATION

Kenneth W. Bateman states that he is a Special Investigator for the Pennsylvania Office of Attorney General, Tobacco Enforcement Section, that he has been authorized to make this Verification on behalf of the Plaintiff, and that the statements set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

These statements are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: _____

KENNETH W. BATEMAN